Chapter 21.22

CRITICAL LANDS ORDINANCE

Sections:

21.22.010 PURPOSE.

The purpose of this chapter is to protect the public health, safety, and welfare by establishing provisions to classify, protect, and preserve Bremerton's critical areas; by providing standards to manage development in association with these areas; and by designating some of these areas as environmentally sensitive in accordance with the State Environmental Policy Act (SEPA). (Ord. 4422 §1 (in part), 1993).

21.22.020 INTENT.

Critical areas include critical aquifer recharge areas, fish and wildlife habitat conservation areas, flood hazard areas, geolgically hazardous areas, stream corridors, wetlands, and any buffer zones. These critical areas serve many important ecological functions. Many of the critical areas in Bremerton have been lost or degraded through past development. Bremerton, as an urban growth area, is experiencing increasing growth and its land resource is diminishing. This increasing growth and diminishing land resource is creating pressure for the development of critical areas. New construction technology is also creating pressure on these sites by making development feasible on sites where it was formerly impractical to build.

Because of the ecological benefits of critical areas, their past destruction, and the increasing pressure to develop them, the intent of this chapter is to ensure that the City's remaining critical areas are preserved and protected and that development in or adnacent to these areas is managed. This chapter contains classification criteria and preservation standards for each type of critical area. The classification criteria identify physical characteristics by which critical areas are designated. The preservation standards are provisions designed to protect critical areas from degradation caused by improper development. These criteria and standards will secure the public health, safety and welfare by:

(a) Reducing risk of damage due to erosion, flooding, and land slides;

(b) Reducing the risks to the public from personal injury, loss of life, or property damage;

(c) Maintaining surface water quality and protecting groundwater areas which help recharge (purify or resupply) rivers, streams, and aquifers;

(d) Maintaining and protecting priority fish and wildlife habitats;

(e) Providing open space and aesthetic value;

(f) Providing migratory pathways for fish and birds;

(g) Providing unique urban wilds that serve as natural laboratories for schools and the general public;

(h) Avoiding public expenditures to correct damaged or degraded critical ecosystems;

(i) Alerting appraisers, assessors, owners, potential buyers, or lessees to the potential presence of a critical ecosystem and possible development limitations; and

(j) Providing City officials with information, direction, and authority to protect ecosystems when evaluating development proposals. (Ord. 4422 §1 (in part), 1993).

21.22.030 SCOPE AND APPLICABILITY.

(a) General: This chapter applies to any activity which would destroy the natural vegetation; result in a significant change in critical habitat, water temperature, physical or chemical characteristics; or alter natural contours and/or substantially alter existing patterns of tidal, sediment, or storm water flow on any land which meets the classification standards for any critical area defined herein. Such activities include excavation, grading, filling, the removal of vegetation, and the construction, exterior alteration, or enlargement of any building or structure. In addition, this chapter applies to all

public or private actions, permits, and approvals in or adjacent to a critifcal area and its buffer, including but not limited to the following:

(1) Building, demolition, grading, filling, special, storm water and sanitary sewer permits, and local improvement districts;

(2) Subdivisions and short plats;

(3) Reclassifications, site plan approvals, shoreline substantial development permits, and special and conditional use permits; and

(4) Temporary use permits, variances, exceptions, and waivers.

(b) Exempted Activities: Maintenance and repair of legally existing roads, structures or facilities. All work must be conducted using best management practices. The Director may place conditions on any such one-time exemption. The maintenance and repair of legally existing roads, structures or facilities may occur without application to and approval by the Director.

(c) Where one site is classified as containing two or more critical areas, the project shall meet the minimum standards and requirements for each identified critical area as set forth in this chapter.

(d) Critical areas may be located through the use of information from the United States Department of Agriculture Soil Conservation Service, the United States Geological Survey, the Washington Department of Ecology, the Coastal Zone Atlas, the National Wetlands Inventory maps, Bremerton topography maps, the Kitsap County Generalized Wetland and Critical Areas Inventory maps, and Kitsap County Assessor's maps. The Kitsap County Generalized Wetland and Critical Areas Inventory maps and other above-listed sources are only guidelines available for reference. The actual location of critical areas must be determined on a site-by-site basis according to the classification criteria found in this ordinance. (Ord. 4422 §1 (in part), 1993).

21.22.040 ABROGATION AND GREATER RESTRICTIONS.

Where this chapter imposes greater restrictions than existing regulations, easements, covenants or deed restrictions, provisions of this chapter shall prevail. It is not intended that this chapter repeal, abrogate, or impair any existing regulations, easements, covenants, or deed restrictions. (Ord. 4422 §1 (in part), 1993).

21.22.050 DEFINITIONS.

Words and phrases used in this chapter shall be interprested as defined below. Where ambiguity exists, words or phrases shall be interpreted so as to give this chapter its most reasonable application in carrying out its regulatory purpose.

(a) (1) Aquifer: A saturated geologic formation which will yield a sufficient quantity of water to serve as a private or public water supply.

(2) Aquifer critical recharging areas: Areas of permeable deposits exposed at the surface which transmit precipitation and surface water to an aquifer which is used for potable water.

(b) (1) Best management practices: The utilization of methods, techniques or products which have been demonstrated to be the most effective and reliable in minimizing impacts.

(2) Buffer zone: An area required by this chapter surrounding a natural, restored or newly created critical area. The buffer zone also serves as a buffer between the critical area and its associative upland areas and as an integral part of the habitat ecosystem.

(c) (1) Class, wetland: One of the wetland classes in the United States Fish and Wildlife Service publication, Classification of Wetlands and Deepwater Habitats of the United States (December 1979). A class describes the general appearance of the habitat in terms of either the dominant vegetation life form or the physical geography and composition of the substrate. The following are examples of classes:

(2) Clearing: The destruction or removal of logs, scrub-shrubs, stumps, trees or any vegetative material by burning, chemical, mechanical or other means.

(3) Compentation: Replacement by creation, enhancement or restoration of a wetland equivalent in function and value to the one being impacted or lost due to

development. Compensation may also include the use of monetary contributions to a mitigation fund.

(4) Creation: Bringing a wetland or stream corridor into existence at a site in which a wetland or stream corridor did not formerly exist.

(5) Critical areas include the following ecosystems: Areas with a critical recharging effect on aquifers used for drinking water, fish and wildlife habitat conservation areas, frequently flooded areas, geologically hazardous areas, wetlands, and streams.

(d) (1) Director: Director of Community Development or his/her designee.

(e) (1) Ecosystem: The system of interrelationships within and between a biological community and its physical environment.

(2) Emergent wetland: A wetland with at least 30 percent of its surface covered by erect, rooted, herbaceous vegetation at the uppermost vegetative strata.

(3) Endangered species: A regional plant or animal species which is in danger of extinction throughout all or a significant portion of its range. Such animal species are designated by the Washington Department of Wildlife pursuant to WAC 232-12 or United States Fish and Wildlife Service.

(4) Enhancement: A process undertaken to rehabilitate or improve an existing degraded wetland or stream by increasing or decreasing plant diversity and increasing water quality, wildlife habitat or erosion controls.

(5) Erosion: Wearing away of earth's surface as a result of movement of wind, water, ice, or ay means.

(6) Erosion hazard areas: Areas which contain soils classified by the United States Department of Agreculture Soil Conservation Service that may experience severe to very severe erosion hazards.

(7) Exotic: A species of plants or animals that is foreign to the area in questions.

(f) (1) Fill: Dumping or placing, by any means, any material on any soil or sediment surface, including temporary stockpiling of material.

(2) Fish and wildlife habitat conservation areas: Areas identified as being of critical importance to the maintenance of fish and wildlife species.

(3) Flood hazard areas: Lands in a floodplain. These include areas adjacent to lakes, streams, oceans or other bodies of water lying outside the ordinary bank of the water body and which are periodically inundated by flood flow with a one percent or greater expectancy of flooding in any given year.

(4) Flood water storage: The ability to hold and slow down flood waters. Construction in a floodway reduces the flood water storage capacity and the removal of vegetation from a floodway reduces the floodway's ability to slow down flood water.

(5) Forested wetland: A wetland with at least 20 percent of the surface area covered by woody vegetation greater than 20 feet in height.

(6) Function: The beneficial role critical areas serve, including but not limited to fish and wildlife habitat, storage and conveyance of water, floodwater and storm water retention, and provision of erosion, landslide and sediment controls.

(g) (1) Geologic hazards specialist: A professional geologist or engineering geologist with a degree in the geologic sciences from an accredited college or university with a minimum of four years' experience in geologic practice involving geologic hazards. A qualified geotechnical engineer, licensed as a civil engineer with the State of Washington, with a minimum of four years' experience in landslide evaluation, may also qualify as a geologic hazards specialist.

(2) Geologically hazardous areas: Areas that are susceptible to erosion, sliding, severe risk of earthquake damage, or other geological events.

(3) Grading: Excavating, filling, leveling, or artificially modifying surface contours, steep or moderate slope. Land modification includes clearing, grading, and other soil disturbances. It does not include pruning of vegetation, provided such pruning is not so extensive as to disturb the soil stability.

(i) (1) In-kind replacement: Replacement of a wetland with one of equivalent characteristics and quality at a ratio equal to or greater than the existing ecosystem.

(l) (1) Land modification: A human-induced action which affects the stability of an erosion hazard area, landslide hazard area, or steep or moderate slope. Land modification includes clearing, grading, and other soil disturbances. It does not include pruning of vegetation, provided such pruning is not so extensive as to disturb the soil stability.

(2) Landslide: An episodic down slope movement of a mass of soil and/or rock.

(3) Landslide hazard areas: Areas that are subject to severe landslide risk because of a combination of geologic, topographic, and hydrologic factors.

(4) Low-intensity land use: Uses associated with low levels of human or structural activity. Low intensity land uses include passive recreation, open space and small gardens.

(m) (1) Mitigation: A negotiated action involving the avoidance, minimization or compensation for possible adverse impacts.

(2) Monitoring: The process of collecting and evaluating data to assess the biological, hydrological or geological performace of newly created, restored, enhanced and/or affected wetlands or streams.

(n) (1) Native vegetation: Vegetation comprised of plant species which are indigenous to the area in question.

(o) (1) Ordinary high water mark: A mark that has been found where the presence and action of waters are common, usual, and maintained in an ordinary year long enough to create a distinction in character between water body and the abutting upland.

(p) (1) Parties of record: Individuals, entities and groups who have commented on a proposal in writing or in person or who have asked to be included on a mailing list for a specific proposal.

(2) Priority habitats: Seasonal range or habitat element with which a given species is primarily associated and which, if altered, may reduce survival potential of that species over the long term. Priority habitats are designated by the Washington Department of Wildlife, Priority Habitat and Species Program, and may include habitat areas of high relative density or species richness, breeding habitat or habitats used as winter range or movement corridors. Habitats of limited availability or with high vulnerability to alteration, such as cliffs, talus, and wetlands, may also be included.

(3) Priority species: Species which are of concern beause of their population status and sensitivity to habitat alteration. Priority species are designated by the Washington Department of Wildlife, Priority Habitat and Species Program, and may include endangered, threatened, sensitive, candidate, monitored, or game species.

(r) (1) Resotration: Improving, enhancing, and reestablishing a once viable and now degraded wetland or stream to a state in which its stability, functions, and values approach its unaltered state.

(2) Riparian habitat: Wetland habitat bordering a stream which is occasionally flooded and periodically supports predominantly hydrophytes.

(s) (1) Scrub-shrub wetland: A wetland with at least 30 percent of its surface area covered with woody vegetation less than 20 feet in height.

(2) Seismic hazard areas: Areas subject to severs risk of earthquake damage as a result of seismic induced settlement, sliding or soil liquefaction.

(3) Sensitive species: A regional plant or animal species that is vulnerable or declining and is likely to become endangered or threatened in a significant portion of its range without cooperative management or the removal of threats. Such animal species are designated by the Washington Department of Wildlife pursuant to WAC 232-12 or United States Fish and Wildlife Service.

(4) Slope: A slope is delineated by establishing its toe and top and measured by averaging the inclination over at least 10 feet of vertical relief.

(5) Stream corridor: Perennial, intermittent or ephemeral waters included within a channel of land and its adjacent riparian zones which serves as a buffer between the aquatic and terrestrial upland ecosystems.

(6) Streams: Lands and waters contained within a channel which support

hydrophytes and where the substrate is predominantly undrained hydric soils, nonsoil and/or is saturated with water or covered by water each growing season.

(7) Subclass, wetland: One of the wetland subclasses in the United States Fish and Wildlife Service publication, Classification of Wetlands and Deepwater Habitats of the United States (December 1979). A subclass is based on finer distinctions in life forms and/or substrate materials. Examples of subclasses of vegetation include needle-leafed evergreen, board-leafed evergreen, needle-leafed deciduous and broad-leafed deciduous.

(t) (1) Threatened species: A regional plant or animal species which is likely to become endangered in the foreseeable future throughout all or a significant portion of its range. Such animal species are designated by the Washington Department of Wildlife pursuant to WAC 232-12 or United States Fish and Wildlife Service.

(2) Toe of slope: A distinct topographic break in slope at the lowermost limit of an area where the ground surface drops ten feet or more vertically within a horizontal distance of 25 feet.

(3) Top of SLope: A distinct topographic break in slope at the uppermost limit of an area where the ground surface drops ten feet or more vertically within a horizontal distance of 25 feet.

(u) (1) Unavoidable impacts: Impacts to a wetland or stream or associated buffers that will remain after project completion, when it has been demonstrated that no practicable alternatives exist, that extraordinary hardship exists or that the project is in the public interest.

(w) (1) Water-dependent activity: Activity or use that requires the use of surface water to fulfill the basic purpose of the proposed project.

(2) Wetlands: Areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include small lakes, ponds, streams, swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including but not limited to irrigation and drainage ditches, grass-lines swales, canals, detention facilities, farm ponds, and landscape amenities if routinely maintained for those purposes. However, wetlands do include those artificial wetlands intentionally created to mitigate conversion of wetlands.

(3) Wetlands specialist: A person who has earned a degree in one of the biological sciences from an accredited college or university with specific course work concerning the function and value of wetlands, such as hydrology, soil classification, and plant identification, with a minimum of four years' experience in such fields. A qualified consultant or professional person who has had equivalent educatoin and training, or with equivalent experience, may also qualify as a wetlands specialist for the purpose of performing wetland delineations, analysis of functions and values and determination of possible mitigation. The person should be familiar with the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands" (1989). (Ord. 4422 §1 (in part), 1993).

21.22.060 ADMINISTRATIVE PROCEDURES.

(a) General: The administrative procedures contained in BMC 21.02.850-.940, shall apply unless modified by this chapter.

(b) Pre-application consultations: Any person intending to construct, grade or conduct any activity subject to this chapter in a critical area is encouraged, but not required, to meet with the staff of the Engineering Division, Public Works and Utilities Department, during the earliest possible stages of project planning in order to discuss impact avoidance and minimization and compensation before large commitments have been made to a particular project design. Effort put into preapplication consultations and planning will help applicants create projects which will be more quickly and easily processed.

(c) Conditions: The Director may attach any conditions deemed necessary to minimize or avoid impacts to any critical area.

(d) Suspension/Revocation of Approval: The Director may suspend or revoke an approval, if it is found that the applicant has not complied with the conditions or limitations set forth in the approval or that the applicant has exceeded the scope of the work set forth in the approved proposal. The applicant may also be subject to enforcement. The Director shall cause notice of revocation or suspension of an approval to be mailed by certified mail to the property owner and by first class mail to the parties of record.

In the event of a suspension or revocation, the applicant will be required to submit a revised plan or provide a new application, plans, and additional fees for the approval process. The Director may require repair or mitigation to any critical areas or buffers disturbed or destroyed.

(e) Notice on Title: The owner of any property upon which approval under Bremerton Municipal Code Chapter 21.02 Zoning Code, or Title 17 Buildings and Construction, is sought, with a critical area or critical area buffer verified on site through an assessment, delineation or permit application, shall record a notice of presence of the critical area and/or buffer with the Kitsap County Auditor. Such recording shall contain notice of the critical area and/or buffer and the applicability of this chapter to said property. Such notification shall be in a form as specified by the Department of Community Development. The notice shall be notarized and the applicant must suubmit proof that the notice has been legally recorded before the final approval for development is issued. The notice shall run with the land and failure to record such notice shall be in violation of this chapter. (Ord. 4422 §1 (in part), 1993).

21.22.070 AQUIFER RECHARGE AREAS.

(a) Classification: Classification of recharge areas as critical areas shall be based upon the recharge potential and vulnerability of the aquifer to degradation and contamination. High recharge potential and aquifer vulnerability is indicative of lands with high infiltration potential of the soil, precipitation rates, and therefore more susceptible to contaminants related to land-use activity. These areas are classified and designated in the Kitsap County Ground Water Management Plan, Volume I, Exhibit II-14.

(b) Standards: Standards for development in aquifer recharge areas shall be those adopted in the Kitsap County Ground Water Management Plan except for those areas designated in the Bremerton Area Comprehensive Plan for High Density Residential, Commercial, Central Business District, and Industrial Land-uses. (Ord. 4422 §1 (in part), 1993).

21.22.080 FISH AND WILDLIFE HABITAT CONSERVATION AREAS.

(a) Classification: Fish and wildlife habitat conservation areas are areas identified by the Washington Department of Wildlife as being of critical importance to the maintenance of fish and wildlife species. These areas may include other critical areas such as geologically hazardous areas, stream corridors, wetlands, and these critical areas' associative buffers.

(1) Potential fish and wildlife habitat conservation areas:

Fish and wildlife habitat areas may include:

i. Lands containing priority habitats and species.

ii. All public and private tidelands or bedlands suitable for shellfish harvest, including any shellfish protection districts established pursuant to RCW Chapter 90.72. The Washington Department of Health's classification system shall be used to classify commercial shellfish areas.

iii. Kelp and eelgrass beds and herring and smelt spawning areas. Kelp and eelgrass beds may be classified and identified by the Washington Department of Natural Resources Aquatic Lands Program and the Washington Department of Ecology. Locations are compiled in the Puget Sound Environmental Atlas, Volumes 1 and 2. Herring and smelt spawning times and locations are outlined in WAC 220-110, Hydraulic Code Rules and the Puget Sound Environmental Atlas.

iv. Natural ponds under 20

acres and their submerged aquatic beds that provide critical fish or wildlife habitat.

v. Waters of the state, which are defined in WAC Title 22, Forest Practices Rules and Regulations. Waters of the state must be classified using the system in WAC 222-16-030. In classifying waters of the state as fish and wildlife habitat conservation areas the following may be considered:

1. Species present which are endangered, threatened, sensitive or priority;

2. Species present which are sensitive to habitat manipulation;

3. Historic presence of priority species;

4. Existing surrounding land uses that are incompatible with salmonid habitat;

5. Presence and size of riparian ecosystem;

6. Existing water rights; and

7. The intermittent nature of some of the higher classes of waters of the state.

vi. Lakes, ponds, streams and rivers planted with game fish, including those planted under the auspices of a federal, state, local or tribal program and waters which support priority fish species as identified by the Washington Department of Wildlife.

vii. State natural area preserves and natural resource conservation areas, which are defined, extablished, and managed by the Washington Department of Natural Resources.

(2) Minimum fish and wildlife habitat conservation areas: Any property meeting the requirements of subparagraphs i through vii above may be classifeid as a fish and wildlife habitat conservation area. At a minimum, all property meeting any of the following characteristics will be classified as a fish and wildlife habitat conservation area:

i. Lands containing endangered or threatened species or habitats for endangered or threatened species; and

ii. Streams containing salmonids.

(b) Standards: Alteration of fish and wildlife habitat conservation areas may reduce the likelihood that the species will survive or reproduce. Activities allowed in fish and wildlife habitat conservation areas shall be consistent with the species located there and all applicable state and federal regulations regarding that species. Many of these marine habitats are regulated by the Bremerton Shoreline Master Program and the Washington Department of Fisheries Hydraulic Permit process. The Critical Areas ordinance is designed to address fish and wildlife habitat areas not previously addressed by the Bremerton Shoreline Master Program, the Fisheries Hydraulic Permit or other regulatory program. In determining allowable activities, the provisions of the Washington Department of Wildlife's Management Recommendations for Washington Priority Habitats and Species shall be reviewed. Development in these areas shall be in accordance with the requirements of the underlying zone and any overlapping critical area classification. (Ord. 4422 §1 (in part), 1993).

21.22.090 FLOOD HAZARD AREAS.

(a) Classification: Classifications of flood hazard areas shall be consistent with the 100-year floodplain designation of the Federal Emergency Management Agency and the National Flood Insurance Program.

(b) Standards: All development proposals shall comply with Section 17.60 of the Bremerton Municipal Code for general and specific flood hazard protection. Development shall not reduce the base flood water storage abaility. Construction, grading or other regulated activities which would reduce the flood water storage ability must be mitigated by creating compensatory storage on or off-site. Base flood data and flood hazard notes shall be shown on the face of any recorded plat or site plan including, but not limited to, base flood elevations, flood protection elevation, boundary of floodplain, and zero rise floodway. (Ord. 4422 §1 (in part), 1993).

21.22.100 GEOLOGICALLY HAZARDOUS AREAS.

(a) General: Geologically hazardous areas include areas susceptible to erosion, sliding, earthquake or other geological events. Geologically hazardous areas include erosion hazard areas, landslide hazard areas, moderate

and steep slopes, and seismic hazard areas.

(b) Classification:

(1) General: Geologically hazardous areas shall be classified based upon landslide history and the presence of unstable soils, steep slopes, high erosion potential and seismic hazards. Areas in this classification are a potential threat to public health, safety and welfare when construction or incompatible land uses are allowed. Some potential risk due to construction in geologically hazardous areas can be reduced through structural design. Construction in geologically hazardous areas should be avoided when potential risk to public health and safety cannot be reduced to a level of risk comparable to the level of risk if the site were left in its natural state.

i. In determining the significance of the risk to public health and safety in a geologically hazardous area, the following criteria may be used:

1. Potential economic, health, and safety impacts related to construction in these areas;

2. Soil type, slope, and vegetative cover; and

3. Available documentation of the following:

A. The history of soil movement,

B. The presence of mass wastage,

C. Debris flows,

D. Rapid stream incision,

E. Stream bank erosion or undercutting by wave action, or

F. The presence of alluvial fan which may be subject to inundation debris flows or deposition of stream-transported sediments.

ii. Classification as a critical area may be based upon the risk to development in geologically hazardous areas.

(2) Erosion hazard areas shall be as defined by the United States Department of Agriculture Soil Conservation Services, United States Geologic Survey or by the Washington Department of Ecology Coastal Zone Atlas. The following classes are erosion hazard areas:

i. Class U (Unstable) includes severs erosion hazards and rapid surface runoff areas,

ii. Class Uos (Unstable old slides) includes areas having severe limitations due to slope,

iii. Class Urs (Unstable recent slides), and

iv. Class I (Intermediate).

(3) Landslide hazard areas shall include areas subject to severe risk of landslide based on a combination of geologic, topographic, and hydrologic factors. These areas may be identified by using information from the United States Department of Agriculture Soil Conservation Service, United States Geologic Survey or the Washington Department of Ecology Coastal Zone Atlas. Landslide hazard areas include the following:

i. Any area characterized by slopes greater than 15 percent; impermeable soils (typically silt and clay) frequently interbedded with permeable granular soild (predominantly sand and gravel) or impermeable soils overlain with permeable soild; and springs or groundwater seepage;

ii. Any area which has exhibited movement during the Holocene epoch (from 10,000 years ago to present) or which is underlain by mass wastage debris of that epoch;

iii. Any area potentially unstable due to rapid stream incision, stream bank erosion or undercutting by wave action;

iv. Any area located on an alluvial fan presently subject to or potentially subject to inundation by debris flows or deposition of stream-transported sediments;

v. Any area with a slope of 40 percent or greater and with a vertical relief of ten or more feet;

vi. Any area with slope defined by the United States Department of Agriiculture Soil Conservation Service as having a "severe" limitation for building site development; and

vii. Any shoreline designated or mapped as class U, Uos, Urs or I by the Washington Department of Ecology Coastal Zone Atlas.

(4) Slopes:

i. Moderate slopes shall include any slope greater than or equal to 25 percent and less than 40 percent.

ii. Steep slopes shall include any slope greater than or equal to 40 percent.

(5) Seismic hazard areas shall include areas subject to severs risk of earthquake damage as a result of seismic induced settlement, shaking, slope failure or soil liquefaction. These conditions occur in areas underlain by soils of low cohesion or density usually in association with a shallow groundwater table. Seismic hazard areas shall be as defined by the United States Department of Agriculture Soil Conservation Service, United States Geologic Survey or by the Washington Department of Ecology Coastal Zone Atlas. The following classes are seismic hazard areas: Class U (Unstable), Class Uos (unstable old slides), Class URS (Unstable recent slides), Class I (Intermediate) and Class M (Modified).

(c) Standards:

(1) Erosion Hazard Areas:

i. Erosion control plan: Applicant shall submit an erosion control plan prior to approval of proposal. Plans shall be consistent with the guidelines set forth in Section, Excavation and Grading, of the Official Code of the City of Bremerton.

ii. Land Modifications: All authorized clearing for roads, utilities, etc. shall be limited to the minimum necessary to accomplish construction. All land modifications of erosion hazard sites shall meet the following requirements:

1. Clearing, grading or filling of sloped sites containing erosion hazard areas shall be limited to the period between April 1 and October 1.

2. All clearing shall be marked in the field for inspection and approval prior to alteration of site.

3. The face of cut and fill on slopes shall be prepared and maintained to control against erosion.

(2) Landslide Hazard Areas: All development proposals on sites containing landslide hazards shall comply with the following requirements:

i. Land Modifications: Landslide hazard areas located on slopes 40 percent or greater shall be altered only as allowed under the standards for steep slopes as set forth in this section. Landslide hazard areas and land adjacent to such a hazard area located on slopes less than 40 percent may be altered:

1. If the proposal will not increase surface water discharge or sedimentation within said landslide hazard area.

2. If the proposal will not decrease adjacent property slope stability, and

3. If it can be demonstrated through geotechnical analysis that there is no significant risk to the development proposal or adjacent properties, or that the proposal can be designed so that the landslide hazard is significantly eliminated.

ii. Buffers: Unless the land modification is approved under the provisions in subparagraph 2.a above, a minimum buffer of 50 feet shall be provided from the edge of all landslide hazard areas regardless of percent of slope. The buffer may be extended by the Director beyond these limits to mitigate erosion hazards.

(3) Slopes: Grading, vegetation removal and other soil disturbances on slopes can lead to erosion or landslides. If the amount of the slope disturbed is decreased, then the risk of erosion and landslides decreases. The risk is also less on slopes which are less steep. Therefore, all soil disturbances on moderate and steep slopes shall be reviewed and certain standards are required to be met depending on the percent of slope.

i. The following sets forth guidelines for maximum soil disturbance depending on the percent slope:

Slope	Disturbance Allowed
1-24%	100%
25-39%	45%
40% or greater	0%

ii. Location of development on moderate and steep slopes shall meet the following standards:

1. Development must be located to minimize soil disturbance and removal of vegetation, to protect sensitive areas and to retain open space;

2. Structures must be clustered where possible to reduce soil disturbance and maintain the natural topography; and

3. Structures should conform to the natural contour of the slope and foundations

should be tiered, where possible, to conform to the existing topography of the site.

iii. Design of development on moderate and steep slopes shall meet the following standards:

1. All development proposals shall be designed to minimize the footprint of building and other disturbed areas. Common access drives and utility corridors are encouraged;

2. All development shall be designed to minimize impervious lot coverage and should incorporate under-structure parking and multi-level structures within the existing height limit;

3. Roads, walkways and parking areas should be designed to parallel the natural contours; and

4. Access shall be in the least sensitive area of the site.

5. Where the proposal exceeds the soil disturbance guidelines of subparagraph (3)i above, it shall be demonstrated through a soild report prepared by a geological hazards specialist that no significant adverse impact will result.

iv. Additional standards for steep slopes:

1. Only the following land modifications are allowed without a soils report as specified in subparagraph (3)iii.5 above, and provided that the guidelines in subparagraphs (3)i above are met;

A. Where approved surface water conveyance will result in minimum vegetation removal and soil disturbance on the slope,

B. The construction of approved public or private trails, provided they are constructed in a manner which will not contribute to surface water runoff,

C. The construction of public or private utility corridors, provided it has been demonstrated that such construction will not significantly increase landslide or erosion risks, or

D. Trimming and limbing of vegetation for the creation and maintenance of view corridors, provided that the soils are not disturbed and the loss of vegetative cover will not significantly increase risks of landslide or erosion.

2. In all other cases, no land modification is allowed on a steep slope and a minimum 15 foot vegetation buffer shall be established from the top, toe and along all sides of the slope. The buffer may be extended beyond these limits on a case-by-case basis to mitigate landslide and erosion hazards.

(4) Seismic Hazard Areas: Standards for development in seismic hazard areas shall be in accordance with the provisions of Chapter 2.02, Building Code, of the Official Code of the City of Bremerton. (Ord. 4422 §1 (in part), 1993).

21.22.110 WETLANDS AND STREAM CORRIDORS

Sections .120 through .270 apply to wetlands and stream corridors only. (Ord. 4422 §1 (in part), 1993).

21.22.120 WETLANDS AND STREAM CORRIDORS - APPLICABILITY.

This chapter does not apply to wetlands or streams waterward of the ordinary high water mark of any body of water regulated by the Shoreline Management Act. (Ord. 4422 §1 (in part), 1993).

21.22.130 CLASSIFICATION.

(a) General: A wetland or stream classification shall be established based upon the completion of a delineation report to determine boundary, size, function, and value. Guidelines for preparing stream corridor and wetland delineation reports are defined in Section .140(c) and the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands" (1989).

(b) Streams shall be classified type I, II and III in accordance with the following criteria:

(1) Type I streams: Those streams inventoried as shorelines of the state and regulated by the Shoreline Master Program of the City of Bremerton and the state Shoreline Management Act.

(2) Type II streams: Those streams which are smaller than type I streams and

flow year round during periods of normal rainfall. Streams used by salmonids and/or have significant salmonid habitat whether flowing year-round or intermittent. Streams which flow directly into streams that are used by salmonids or have significant salmonid habitat, whether flowing year-round or intermittent, are type II streams.

(3) Type III streams: Those streams that are intermittent or ephemeral during years of normal rainfall and are not used by salmonids and do not have significant salmonid habitat or flow directly into streams used by salmonids or which have significant salmonid habitat.

(c) Wetlands shall be classified type I, II, III and IV, in accordance with the following criteria from the Washington State Wetlands Rating System for Western Washington developed by the Washington Department of Ecology. The Washington Department of Ecology has developed a methodology for rating wetlands under this rating system. That methodology shall be used in rating wetlands under this chapter. It is contained in Washington Department of Ecology Publication Number 91-57 (October 1991).

(1) Type I wetlands are wetlands categorized as meeting one of the following:

i. Documented habitat recognized by federal or state agencies for threatened or endangered species of plant or possibly extinct or extirpated plant, animal or fish;

ii. Documented high-quality Natural Heritage wetland sites or high-quality native wetland communities which qualify as a Natural Heritage wetland site;

iii. Documented habitat of regional (Pacific coast) or national significance for migratory birds;

iv. Regionally rare wetland communities with irreplaceable ecological functions, including, but not limited to, sphagnum bogs and fens, estuarine wetlands, or mature forested swamps; or

v. Wetlands of exceptional local significance. The criteria for identifying these wetlands may include, but not be limited to, rarity, groundwater recharge areas, significant habitats, unique educational sites, or area where plant associations of infrequent occurrence such as high and low salt marsh systems,bogs or coniferous forested wetlands occurring on organic soils.

(2) Type II wetlands are categorized as meeting one of the following:

i. Documented habitat for sensitive species of plant, animal or fish recognized by federal or state agencies;

ii. Wetlands with documented priority habitats or species recognized by state agencies;

iii. Wetlands with significant functions which may not be adequately replicated through creation or restoration; or

iv. Regulated wetlands with significant habitat value based on diversity and size; or

v. Regulated wetlands contiguous with salmonid fishbearing waters, including streams where flow is intermittent; or

vi. Regulated wetlands with significant use by fish and wildlife; or

vii. Wetlands equal to or greater than one acre in size and having three or more wetland classes.

(3) Type III wetlands are defined as those wetlands that do not contain features outlined in type I, II or IV.

(4) Type IV wetlands are defined as those hydrologically isolated wetlands that do not meet the criteria of a type I or II wetland and are:

i. Equal to or less than one acre in size, have only one wetland class and have only one dominant plant species (monotypic vegetation) or

ii. Equal to or less than two acres in size, have only one wetland class and a predominance of exotic species. (Ord. 4476 §1, 1994; Ord. 4422 §1 (in part), 1993).

21.22.140 REVIEW PROCESS.

(a) Overview: Application for a wetland or stream assessment, delineation or permit by one or more property owners or applicants shall be made to the Department of Community Development. The Department of Community Development may utilize information from the

United States Department of Agriculture Soil Conservation Service, the United States Geological Survey, the Washington Department of Ecology, the Coastal Zone Atlas, the National Wetlands Inventory maps, Bremerton topography maps, and the Kitsap County Critical lands map to establish general locations and/or verify the location of any wetland or stream site. The Director shall make an initial assessment, which may require plans as specified in Section .140(c) and a site inspection, to determine whether a delineation report is required. If a delineation report is required, the Director will then determine whether a wetland or stream development permit is required. Review by the Department of Community Development will generally be in accordance with the following process, except as provided in Section .150 or .160:

(l) If, after the comment period, site inspection, and preliminary review of plans, it is determined by the Director that:

i. No adverse impacts will occur to the wetland or stream and/or adjacent buffer zones and

ii. The proposed use or structure is located beyond the required buffer zones based upon wetland type, then:

1. The Director issues a written decision (permit) stating reasons for exemption; and

2. The decision is sent to parties of record per Section . l 40(e) allowing time for an appeal in accordance with Section .300.

(2) If, after the comment period, site inspection, and preliminary review of plans, the Director is unable to determine the wetland or stream delineation or potential adverse impacts on the wetland or stream and/or its adjacent buffer zones, then a delineation report is required per Section .140(c).

i. If the applicant can meet the minimum buffer requirement as provided in Section .220 and the applicant can demonstrate no adverse impacts to the stream or wetland and/or buffer, including storm runoff discharging into an approved storm drainage system, then:

1. No mitigation plans are required;

2. The Director issues a written decision (permit) stating reasons for exemption; and

3. The decision is sent to parties of record per Section .140(e) allowing time for an appeal in accordance with Section .300.

ii. If there will be adverse impacts to the wetland or stream or the applicant cannot meet the minimum buffer requirements as provided in Section .220, then:

1. The applicant must demonstrate:

A. In addition to the application material required in that Section, the applicant shall submit a report prepared by a wetland specialist, and fund a review of this report by the City's wetland specialist consultant, except that a modification necessary for the construction of a single family residence shall not be required to fund an independent review by the City's wetland consultant. This report must contain an assessment of the habitat, water quality purification and enhancement, storm water detention, ground water recharge, shoreline protection, and erosion protection functions of the wetland and/or buffer for the wetland and the effect on those functions caused by the proposed improvement or land surface modification. The Director of Community Development may approve an improvement or land surface modification in a wetland or buffers for a wetland under this paragraph in accordance with the criteria set fourth in Section .220 and .230, or

B. The application of these standards presents an extraordinary hardship in accordance with Section .240, or

C. The proposal is in the public interest in accordance with Section .250; and

2. Mitigation is required in accordance with Section .260; and

3. The Director either:

A. Issues a written decision (permit) specifying conditions of approval, and the decision is sent to parties of record per Section .140(e), allowing time for appeal in accordance with Section .300, or

B. Determines that a public hearing pursuant to of the Official Code of the City of Bremerton is required:

(i) Notice is sent to property owners within 300 feet regarding the public

hearing, allowing time for comment and testimony,

(ii) The Planning Commission issues a decision (permit) specifying conditions of approval, and

(iii) The decision is sent to parties of record, allowing time for appeal pursuant to of the Official Code of the City of Bremerton.

(b) An applicant may request verification of a wetland or stream delineation without submitting plans for a specific project. Such delineation verification will be issued by the Director and shall be valid for three years.

(c) Submittal Requirements

(1) General: The review process occurs in stages and the applicant is also required to submit various information to the Department of Community Development in stages. The information that is generally required at each stage is outlined in subparagraphs (2) through (4) below. An applicant may submit all the information at one time. An applicant who is only requesting a delineation verification is not required to submit information concerning a specific development project.

(2) Application for assessment:

i. Site plan drawn to scale indicating:

1. The width, length, height, and use of all existing and proposed structures, roads, parking lots, landscaped areas, watercourses, drainage ways, and water, wastewater and storm water facilities; and

2. General wetland or stream boundary;

ii. Site topography, including any area that may be filled or impacted and specifying existing and finished contours of the development site;

iii. Legal description of the development site; and

iv. Identification of adjacent land uses.

(3) Delineation report: The delineation of wetlands or streams shall be established by a wetlands specialist in accordance with the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands" (1989). In the event of conflicts regarding information in the delineation report, the Director may, at the applicant's expense, obtain competent expert services to verify information and establish a final delineation. The delineation report shall contain the following:

i. Site plan prepared by a licensed surveyor, indicating the wetland or stream boundary as determined by the wetlands specialist;

ii. Legal description of the wetland or stream;

iii. A description of the wetland or stream that will be affected describing:

1. Vegetation type, common plants and general characteristics of the habitat, water sources and wildlife; and

2. Soil types;

iv. The specifications of all proposed draining, excavation, filling, grading or dredging, including exact locations, amounts and methods; and

v. A description of any vegetation proposed to be cleared or removed.

(4) Application for permit:

i. A statement of the purpose, goals, and objectives of the project;

ii. A description of the direct and indirect physical and biological impacts of the project; and

iii. Identification of which test(s) the applicant believes applies, an explanation of why the applicant believes it applies and an analysis of how the applicant intends to meet the requirements of the test(s). (see .240, .250)

(5) The Director may require additional information at any stage of the review of the applicant's project. Such information could include, but not be limited to, the following:

i. Documentation of a wetland or stream delineation by a wetlands specialist and licensed surveyor;

ii. Assessment and documentation of the wetland or stream's functional characteristics, along with its ecological, aesthetic, economic, and other values;

iii. Study of potential flood, erosion or other hazards on the site and provisions for protective measures that might be

taken to reduce such hazards; and

iv. Any other information deemed necessary to verify compliance with the provisions of this chapter.

The Director shall review the information submitted as to its validity and may reject it as incomplete or incorrect.

(d) Filing Fees: A wetland or stream development fee shall be paid at the time of application. Upon filing such application and prior to administrative review, the applicant shall pay a wetland or stream assessment fee to the City Treasurer. If a delineation report is required after the administrative assessment, the applicant shall pay a fee based upon full cost of processing such application. The purpose of said fee is to defray the City's cost of processing the application and the cost of mailing decisions and/or notice of public hearings. These fees shall be used to cover the costs of reviewing the delineation report, processing the application, providing notice, and issuing the decision. Fees may also be required to retain expert consultants to provide services pertaining to wetland boundary delineation, functional assessments, classification, and mitigation measures, as deemed necessary by the Director.

(e) Notice of Application: A notice of application will be required for all wetland and stream assessments, delineations or permits. Within 30 days of receiving a completed application, the Director shall notify the property owner, if different than the applicant; the owners of property within 300 feet of the subject property, as indicated by the records of the Kitsap County Assessor; qualified neighborhood or community organizations, and any agencies or tribal governments with jurisdiction over the subject matter of the application; provided, however, that upon a finding of the existence of unusual circumstances the Director may extend said 30 day time period. These individuals and groups will be given 14 days to comment on the application, and no action will be taken before the end of the comment period. However, said notice of application and comment period is not required in cases where a public hearing is scheduled. Where a notice of application and comment period has been provided, a copy of the decision shall be sent to the applicant, property owner, and parties of record.

If a public hearing is required, notice shall be required in accordance with of the Official Code of the City of Bremerton.

(Ord. 4476 §2, 1994; Ord. 4422 §1 (in part), 1993).

21.22.150 ALTERNATIVE REVIEW PROCESS.

(a) Applicability: The alternative review process outlined below will be used in cases where a Section 404 individual permit is required from the United States Army Corps of Engineers.

(b) Overview: The applicant shall notify the Director when the applicant applies for the Section 404 permit or contacts the Corps concerning a specific project. The applicant shall keep the Director apprised of the processing of the permit by the Corps, including notifying the Director of all hearings or meetings scheduled to discuss the applicant's project, potential mitigation or approval. The review process of the Corps will substitute for the review process outlined in Subsection .140(a) hereof. City of Bremerton participation in the Corps' review process does not constitute approval of the applicant's project by the City. A wetland or stream development permit will be approved or denied by the Director based upon the substantive provisions of Sections .170 through .270. However, the Director shall consider the mitigation requirements as set forth by the commenting agencies during the Corps' review process and shall concur with that mitigation, if it is functionally equivalent with the requirements of this chapter.

(c) Submittal Requirements: The applicant shall submit the information specified in Subsections .140(c)(2), (3), and (4) to the Department of Community Development when filing for the Corps' permit. The Director may also require the submittal of any additional information deemed necessary.

(d) Filing Fees: Fees, as specified in Subsection .140(d), shall be required; provided, however, that the fee for wetland or stream assessment shall not be required.

(e) Notice of Application: A notice of application will be required as provided for in Subsection .140(e) hereof. (Ord. 4422 §1 (in

part), 1993).

21.22.160 CLEANUP REVIEW PROCESS AND STANDARDS.

(a) Applicability: The cleanup review process and standards outlined below will be used in cases involving cleanup actions under the federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the federal Resource, Conservation and Recovery Act (RCRA), the federal Clean Water Act (CWA), the state Model Toxics Control Act (MTCA) or the state Water Pollution Control Act (WPCA). Any voluntary cleanup cases which are not overseen by the Environmental Protection Agency or the Washington Department of Ecology are subject to the review process in Section .140 hereof.

(b) Purpose: One purpose of CERCLA, RCRA, CWA, MTCA and WPCA is to clean up hazardous substances in the environment. Generally, under these regulations, an investigative study is prepared first to determine the extent of the contamination, then cleanup options are reviewed and, finally, a cleanup option is determined and an order is issued specifying what cleanup must be done and when it must be accomplished. At times, cleanup efforts involve work in wetlands and streams making this chapter applicable. The following review process and standards have been developed because it is in the best interest of the general public to remedy past degradation and damage to the environment.

(c) Standards: The applicant will not be required to demonstrate compliance with the extraordinary hardship test in Section .240 hereof, or the public interest test in Section .250 hereof. The applicant must, however, provide mitigation for any wetland or stream degraded or destroyed in accordance with Section .260 hereof.

(d) Process: The procedures of the review process outlined in Section .140 hereof will be used to review mitigation plans required by Subsection (c) above, except that all decisions will be administrative in an attempt to shorten the review process and to facilitate the applicant's meeting the time restrictions of the cleanup order.

(e) Exemption: All work performed in the investigative stage to determine the extent of the contamination, such as test pits or holes, shall be reviewed and approved according to this subparagraph. The applicant or party performing the investigative work shall submit a letter explaining the work to be performed to the Department of Community Development. The proposal will be reviewed and approved by the Director provided the site will be restored to the condition in which it was prior to the investigative work. The Director shall have the authority to place conditions on such approval. (Ord. 4422 §1 (in part), 1993).

21.22.170 PERMITTED USES/ACTIVITIES.

The uses and activities listed below may be allowed on a site-specific basis, after consideration by the Director, to the extent they are not prohibited by any other ordinance or law. The work shall be conducted using best management practices to ensure that flow, circulation patterns, and chemical and biological characteristics of the stream or wetland are not impaired. Any unavoidable adverse impact affecting the aquatic environment must be mitigated.

(a) Conservation or preservation of soil, water, vegetation, fish, shellfish and other wildlife;

(b) Outdoor passive recreational activities, including fishing, bird watching, walking or hiking trails and non-motorized boating; or

(c) Education and scientific research. (Ord. 4422 §1 (in part), 1993).

21.22.180 TEMPORARY EMERGENCY PERMITS.

The Director may issue a temporary emergency permit, provided an application is filed for a wetland or stream development assessment or permit within five days, if it is deemed that an unacceptable threat to life or severe loss of property will occur if an emergency permit is not granted. This permit may be terminated at any time without process upon determination by the Director that the action was not or is no longer necessary. The Director may within 90 days require the action to be processed

in accordance with all the provisions of this chapter. (Ord. 4422 §1 (in part), 1993).

21.22.190 REGULATED USES/ACTIVITIES.

Pursuant to the requirements of this chapter, a permit shall be obtained prior to undertaking any of the following activities within a wetland or stream and/or its adjacent associated buffer:

(a) Filling, placing or dumping any soil, loam, peat, sand, gravel, rock, chemical substance, refuse, trash, rubbish, debris or dredge material;

(b) Excavating, dredging or clearing any soil, loam, peat, sand, gravel, rock, vegetation, trees or mineral substance;

(c) Discharge of hazardous substances, including but not limited to heavy metals, pesticides, petroleum products or secondary effluent;

(d) Any act which results in draining, flooding or disturbing the water level or table;

(e) Alteration, construction, demolition or reconstruction of a structure or infrastructure, including driving pilings or placing obstructions;

(f) Destroying or altering vegetation through clearing, harvesting, shading, pruning or planting vegetation that would alter the character of the site; and

(g) Any act or use which would destroy natural vegetation; result in significant change in water level, water temperature, physical or chemical characteristics of the wetland or stream; substantially alter existing pattern of tidal flow,obstruct the flow of sediment or alter the natural contours of a site. (Ord. 4422 §1 (in part), 1993).

21.22.200 CONDITIONS.

(a) The Director shall have the authority to attach such conditions to the granting of any permit under this chapter deemed necessary to mitigate adverse impacts and carry out the provisions of this chapter. Such conditions may include, but are not limited to, the following:

(1) Limitations on minimum lot size;

(2) Provisions for additional vegetative buffer zones depending on the intensity of the use or activity;

(3) Requirements that structures be elevated on piles, limited in size or located with additional setback requirements;

(4) Dedication of utility easements;

(5) Modification of waste disposal or water supply facilities;

(6) Imposition of easement agreements or deed restrictions concerning future use and subdivision of lands;

(7) Limitation of vegetation removal;

(8) Setting minimum open space requirements;

(9) Erosion control and storm water management measures, including restrictions on fill and other activities in the wetland or stream; and

(10) Development of a plan involving the creation or enhancement of a stream corridor or wetland or restoration of a damaged or degraded stream corridor or wetland, to compensate for adverse impacts.

(b) Compensation as a Condition: As a condition of a permit or as an enforcement action under this chapter, the City may require that the applicant provide compensation to offset, in whole or part, the potential loss resulting from an applicant's or violator's action or proposal. Such compensation may include the enhancement of a stream corridor or wetland, the restoration of a damaged or degraded wetland or stream or the creation of a new wetland or stream. In making a determination as to whether such a requirement will be imposed, and if so, the degree to which it would be required, the Director shall consider but not be limited to the following:

(1) The long-term and short-term effects of the action and the reversible or irreversible nature of the impairment to or loss of the wetland or stream;

(2) The location, size, and type of and benefit provided by the original and altered wetland or stream;

(3) The effect the proposed work may have upon the remaining ecosystem or associated aquatic system;

(4) The cost and likely success of the compensation measures in relation to the

magnitude of the proposed project or violation;

(5) The observed or predicted trend with regard to the gains or losses of the specific type of wetland or stream; and

(6) The extent to which the applicant has demonstrated a good- faith effort to incorporate measures to minimize and avoid impacts within the project. (Ord. 4422 §1 (in part), 1993).

21.22.210 GENERAL PERMIT STANDARDS.

The Director shall issue wetland or stream development permits in accordance with the wetland or stream classification. No regulated activity or use shall be permitted within a wetland or stream corridor without prior approval and without meeting the provisions of this section. A permit for development in or adjacent to wetlands or stream corridors shall only be granted if it has been demonstrated that the permit, as conditioned, is consistent with the provisions of this chapter and provided:

(a) The applicant has taken appropriate action to avoid adverse impacts or to minimize or compensate for unavoidable impacts,

(b) The result of the proposed activity is no net loss of wetland functions or values, or

(c) The applicant can demonstrate that denial of the requested permit would result in an extraordinary hardship. (Ord. 4422 §1 (in part), 1993).

21.22.220 BUFFERS.

(a) General: A buffer zone shall be provided for all uses and activities adjacent to a wetland area or stream corridor to protect the integrity, function, and value of the wetland or stream. Buffers between regulated activities and wetlands or stream corridors are important because they help to stabilize soils, prevent erosion, act as filters for pollutants, enhance wildlife diversity, and support and protect wetland plants and wildlife. A permit may be granted if it has been demonstrated that no adverse impact to a wetland will occur and a minimum buffer width will be provided in accordance with this section. The buffer shall be measured from the upland edge of the wetland or stream and shall consist of an area of natural, enhanced or new native vegetation.

(b) Minimum Requirement:

(1) Wetlands:

i. Wetland buffer widths shall be established as follows, based on wetland classification:

Type I	200 feet
Type II	100 feet
Type III	50 feet
Type IV	25 feet

ii. Modification: For Type III and Type IV wetlands and buffers for a Type III and Type IV wetlands, the applicant may request a modification of the requirements of this section using the Review Process described in Section .140 of this Chapter. In addition to the application material required in Section .140, the applicant shall submit a report prepared by a wetland specialist, and fund a review of this report by the City's wetland specialist consultant, except that a modification necessary for the construction of a single family residence shall not be required to fund an independent review by the City's wetland consultant. This report must contain an assessment of the habitat, water quality purification and enhancement, storm water detention, ground water recharge, shoreline protection, and erosion protection functions of the wetland and/or buffer and the effect on those functions caused by the proposed improvement or land surface modification. The Director of Community Development may approve an improvement or land surface modification in a wetland or environmentally sensitive area buffers for a wetland under this paragraph only if he/she finds that:

1. It will not adversely affect water quality;

2. It will not destroy, nor damage, or disrupt a significant habitat area;

3. It will not have an adverse effect on drainage and/or storm water detention capabilities;

4. It will not lead to unstable earth conditions or create erosion hazards;

5. It will not be materially detrimental to any other property in the area of the subject property or to the City as a whole; and

6. It will result in land surface modification of not more than one (1) acre, nor

more than twenty-five percent (25%) of the wetland on the subject property.

7. Mitigation is provided as required in accordance with Section .260.

(2) Streams: Streams with riparian wetland habitats shall have the buffer widths which apply to their wetland classification or the following buffer widths, whichever is more restrictive.

i. Minimum buffer widths based on stream classification and the intensity of use and/or activity are:

1. Type I streams: As set forth in the Bremerton Shoreline Master Program, or the same as type II streams below, whichever is greater.

2. Type II streams:

A. Streams used by salmonids and/or have significant salmonid habitat shall have a minimum 100-foot buffer.

B. High intensity uses/activities shall have a minimum 100-foot buffer.

C. Low intensity uses/activities shall have a minimum 50-foot buffer.

D. Streams which flow directly into streams that are used by salmonids or have significant salmonid habitat shall have a minimum 50-foot buffer.

3. Type III streams: A minimum 25-foot buffer.

ii. For streams with banks within 25 feet of the toe of slopes which are 25 percent or greater, the required buffer width shall be the minimum buffer width for that stream type or a buffer width which extends 25 feet beyond the top of the slope, whichever setback provides the maximum buffer.

(c) Buffer areas or buffer widths may be modified, on a case-by-case basis, by averaging, decreasing or increasing widths under the following conditions. In making determinations concerning the modification of buffers, the Director shall consider the relationship between the size in area of the buffers on site and the size in area of the wetlands or streams on site.

(1) Averaging shall be allowed only where the following is demonstrated:

i. Variations in sensitivity exist because of physical characteristics;

ii. The least intense land use will be adjacent to reduced buffer width;

iii. Width averaging will not adversely impact wetland function or value; and

iv. Total area contained within the averaged buffer is equal to the minimum required within the standard buffer zone. However, in no instance shall the buffer be reduced by more than 50 percent for a wetland or stream, or be less than 25 feet for a wetland or ten feet for a stream.

(2) The Director may require increased buffer widths if a larger buffer is necessary to protect the stream or wetland. The determination that an increased buffer width is required shall be based on the following:

i. Streams: Increased buffer widths to protect streams shall be based on, but not limited to, the following circumstances:

1. The development proposal will potentially produce significant noise, light or glare or involves the production, use, storage or sale of hazardous material;

2. The stream serves as a critical fish habitat for spawning or rearing;

3. The stream and/or its riparian habitat is utilized by species classified as endangered, threatened or sensitive;

4. The land adjacent to the stream is classified as a potential landslide or erosion hazard area;

5. The adjacent riparian system has highly infiltrative soils that help to recharge/purify groundwater supply to the stream, or is characterized by till soil where runoff will increase significantly if vegetation is removed;

6. The adjacent riparian system helps to reduce storm water runoff or controls sediment flow; or

7. A low-intensity activity or utility easement is a proposed use of the buffer.

ii. Wetlands: Increased buffer widths to protect wetlands shall be based on, but not limited to, the following circumstances:

1. Wider buffer is needed to preserve viable populations of existing species; or

2. Adjacent land has minimal vegetative cover or has a slope greater than 15 percent.

(3) Buffer widths may also be decreased where it can be demonstrated that:

i. Adjacent land is extensively vegetated and is less than 15 percent slope; or

ii. Project includes a buffer enhancement plan utilizing native wetland vegetation which substantiates that the proposed enhancement will improve the functions of the buffer; and

iii. No direct or indirect short-term or long-term adverse impacts to the wetland or stream will result.

In no instance shall a buffer be reduced by more than 25 percent, or be less than 25 feet for a wetland or ten feet for a stream.

(d) Low-impact uses and activities consistent with the stream or wetland buffer function may be permitted within the buffer depending upon the sensitivity of wetland and intensity of activity or use. These may include pedestrian trails, viewing platforms, utility easements and storm water management facilities such as grass-lined swales.

(e) Yard Reduction: In order to accommodate for the required buffer zone the Director may reduce the front and/or rear yard setback requirements on individual lots. The front and/or rear yard shall not be reduced by more than 50 percent. In determining whether or not to allow the yard reduction, the Director shall consider the impacts of the reduction on adjacent land uses. (Ord. 4476 §3, 1994; Ord. 4422 §1 (in part), 1993).

21.22.230 STANDARDS.

(a) Wetlands:

(1) Type I wetlands: No regulated activities shall be permitted within the wetland boundary or buffer except where the applicant can demonstrate an extraordinary hardship in accordance with Section .240 and mitigation is provided in accordance with Section .260 hereof.

However, those low-intensity uses or activities necessary for public access, educational or research purposes may be allowed within the wetland buffer if it can be demonstrated that there will be no adverse impact on the wetland ecosystem.

(2) Type II wetlands: No regulated activities shall be allowed within the wetland boundary or buffer unless the applicant can demonstrate:

i. The application of these standards presents an extraordinary hardship in accordance with Section .240 hereof; or

ii. The proposal is in the public interest in accordance with Section .250 hereof.

iii. Mitigation is provided in accordance with Section .260 hereof.

(3) Type III and IV wetlands: No regulated activities shall be allowed within the wetland boundary or buffer unless the applicant can demonstrate as follows:

i. The application of these standards presents an extraordinary hardship in accordance with Section .240 hereof; or

ii. The proposal is in the public interest in accordance with Section .250 hereof; or

iii. In addition to the application material required in Section .140, the applicant shall submit a report prepared by a wetland specialist, and fund a review of this report by the City's wetland specialist consultant, except that a modification necessary for the construction of a single family residence shall not be required to fund an independent review by the City's wetland consultant. This report must contain an assessment of the habitat, water quality purification and enhancement, storm water detention, ground water recharge, shoreline protection, and erosion protection functions of the wetland and/or buffer for the wetland and the effect on those functions caused by the proposed improvement or land surface modification. The Director of Community Development may approve an improvement or land surface modification in a wetland or environmentally sensitive area buffers for a wetland under this paragraph only if he/she finds that:

1. It will not adversely affect water quality;

2. It will not destroy, nor damage, or disrupt a significant habitat area;

3. It will not have an adverse effect on drainage and/or storm water detention capabilities;

4. It will not lead to unstable earth conditions or create erosion hazards;

5. It will not be materially detrimental to any other property in the area of

the subject property or to the City as a whole;

6. It will result in land surface modification of no more than one (1) acre, nor more than twenty-five percent (25%) of the wetland on the subject property; and

7. Mitigation is provided as required in accordance with Section .260

(4) For all wetland types, the applicant must demonstrate the following

i. The existence of plant or wildlife species appearing on the federal or state endangered or threatened species list will not be jeopardized;

ii. The proposal will not lead to significant degradation of groundwater or surface water quality; and

iii. The proposal complies with the remaining standards of this chapter, which include those pertaining to wetland compensation and the provision of bonds.

(5) Hydrologically isolated type III and IV wetlands which have been classified and identified as having a total cumulative area of less than 1,000 square feet, regardless of property lines, are exempt from the provisions of this chapter.

(6) Unless the wetland is determined to have exceptional value, the Director shall exclude type III wetlands less than 2,500 square feet and type IV wetlands less than 10,000 square feet from the provisions of this chapter, provided the applicant provides monetary compensation to mitigate for such wetland loss. These monies shall be held in a designated mitigation fund to meet the City's intent of no net loss in wetland function. Such funds shall be used in future wetland creation, restoration and/or enhancement projects or acquisition of wetland sites for public purposes. Such monetary compensation shall be based on the area of wetland loss on a square foot per square foot basis. This monetary compensation value shall be based upon the price of land acquisition plus 125 percent of the amount that would be required to perform off-site, in-kind compensation in accordance with the replacement guidelines set forth in Section .260(b)(1) hereof and monitoring requirements in Section .260(e) hereof. Dedication of land containing wetlands or streams may substitute for monetary compensation, but only to the extent that such dedication would provide the City with increased value because of access, control and protection provided by public ownership or to the extent that such dedicated land would be developable under the provisions of this chapter. Provisions for access must be included with any dedication of land.

(b) Stream Corridors:

(1) Type I streams: All proposed alterations of these areas shall be in accordance with the Shoreline Master Program of the City of Bremerton, and all applicable state and federal regulations. All proposed alterations in the riparian corridor of a type I stream shall be in accordance with the standards for the specific wetland type.

(2) Type II streams may be altered for bridge crossings, trails, utility relocations, embankment stabilization, storm drainage way maintenance, and facilities for surface water management. Such alterations may be permitted by the Director, provided:

i. Where riparian habitats exist, activity or use shall be allowed in accordance with the intensity of use and wetland classification and standards;

ii. The applicant can demonstrate:

1. The application of these standards presents an extraordinary hardship in accordance with Section .240 hereof, or

2. The proposal is in the public interest in accordance with Section .250 hereof; and

iii. Adverse impacts will be mitigated.

(3) Type II streams may be relocated or placed in culverts, provided it can be demonstrated that:

i. No significant habitat area will be destroyed;

ii. The new channel or culvert is designed and installed to allow passage of fish inhabiting or using the stream;

iii. The channel or culvert is large enough to accommodate a 100-year storm;

iv. The applicant will,at all times, keep the channel or culvert free of debris and sediment to allow free passage of water

and/or fish; and

v. The applicant will provide a bond or other financial security to ensure maintenance as provided in Section .270 hereof.

(4) Type III streams may be relocated or placed in culverts, provided it can be demonstrated that:

i. No significant habitat area will be destroyed;

ii. The new channel or culvert is designed and installed to allow passage of fish inhabiting or using the stream;

iii. The channel or culvert is large enough to accommodate a 100-year storm;

iv. The applicant will, at all times, keep the channel or culvert free of debris and sediment to allow free passage of water and/or fish;

v. The applicant will provide a bond or other financial security to ensure maintenance as provided in Section .270 hereof; and

vi. The relocated stream channel will result in improved stream function and value.

(5) In the event stream corridor alterations or relocations, as specified in Subparagraphs 2 and 3 above, are allowed, the applicant shall submit an alteration or relocation plan prepared by a wetlands specialist with expertise in this area. The plan shall address the following information:

i. Creation of natural meander patterns and gentle side slope formations;

ii. Creation of narrow subchannel, where feasible, against the south or west bank;

iii. Provisions for the use of native vegetation;

iv. Creation, restoration or enhancement of fish spawning and nesting areas;

v. The proposed reuse of the prior stream channel; and

vi. Provision of a wetland specialist, approved by the City, to supervise work to completion and to provide a written report to the Director stating the plan for the new channel complies with the provisions of this chapter.

(6) As part of stream enhancement, restoration or maintenance, the City may allow the removal of debris, sediment, vegetation or other things determined to be detrimental. In addition, permitted uses or activities as defined in Section .170 hereof may be permitted within the stream corridor buffer.

(7) The Washington Departments of Wildlife and Fisheries have authority over all projects in state waters which impact fish. Construction in state waters is governed by RCW Chapter 75.20, Construction Projects in State Waters. (Ord. 4476 §4, 1994; Ord. 4422 §1 (in part), 1993).

21.22.240 EXTRAORDINARY HARDSHIP TEST.

An extraordinary hardship exists when the standards of this chapter deny all reasonable economic use of the property. To demonstrate extraordinary hardship, the applicant must demonstrate the following:

(a) The activity or use is a water-dependent project that requires wetland access as an essential element of its function;

(b) There is no reasonable economic use or value with less impact on the wetland or stream;

(c) There are no feasible on-site alternatives to the proposed activity or use (e.g., reduction in density or use intensity, scope or size, change in timing, phasing or implementation, layout revision or other site planning considerations) that would allow reasonable economic use with less adverse impact;

(d) The proposed activity or use will be mitigated to the maximum extent possible and result in minimum feasible alteration or impairment of functional characteristics of the site, including contours, vegetation, fish and wildlife habitat, groundwater, surface water and hydrological conditions;

(e) The proposed activity or use complies with all local, state, and federal laws and will not jeopardize the continued existence of endangered, threatened, sensitive or priority habitat or species; and

(f) The inability to derive reasonable economic use is not the result of actions by the applicant in segregating or dividing the property in a way that makes the property unable to be

developed after the effective date of this ordinance.

(g) Diminished value shall not be considered on extraordinary hardship. (Ord. 4422 §1 (in part), 1993).

21.22.250 PUBLIC INTEREST.

In determining whether a proposed use or activity in any wetland or stream is in the public interest, the public benefit of the proposal and the impact to the wetland or stream must be evaluated by the Director. The proposal is in the public interest if its benefit to the public exceeds its detrimental impact on the wetland or stream. In comparing the proposal's public benefit and impact, the following should be considered:

(a) The extent of the public need and benefit;

(b) The extent and permanence of the beneficial or detrimental effects of the use or activity;

(c) The quality and quantity of the wetland or stream that may be affected;

(d) The ecological value of the wetland or stream;

(e) Probable impact on public health and safety, fish, plants, and wildlife; and

(f) The policies of the Land Use Management Plan. (Ord. 4422 §1 (in part), 1993).

21.22.260 MITIGATION PROCEDURES.

(a) General:

(1) The first underlying measure of wetland and stream protection is to avoid impacts. The next measure is to minimize impacts where possible by limiting the magnitude or scope of the development or use. The final measure of protection is to mitigate or compensate for impacts. This can be accomplished through creation, enhancement or restoration of the wetland or stream. However, the Director may allow compensation rather than avoidance when the applicant demonstrates that compensation would be the preferable environmental alternative.

(2) As provided in Subparagraph 1 above, the creation, enhancement or restoration to compensate for a degraded or destroyed stream or wetland may be an alternative as stated in the standards set forth in Section .230 hereof, and may be used to compensate for losses. The new, enhanced or restored wetland shall recreate as nearly as possible the original wetland in terms of functions, value, geographic location, and setting as provided in Subsection .260(b) hereof. The goal of the compensation alternative shall be no net loss of wetland function. Where possible, compensation shall be completed prior to wetland or stream corridor destruction.

(3) Creation, enhancement or restoration alternatives should be undertaken on or adjacent to the site where permanent losses have been sustained or, where enhancement or restoration of a former wetland is possible, within the same drainage basin. Replacement in kind of the impacted stream or wetland will be the preferred alternative for creation, enhancement or restoration efforts. The Director may accept or recommend creation, enhancement or restoration which is not in-kind, is off-site, and/or is monetary compensation as provided for in this section as an alternative proposal, if the applicant can demonstrate that in-kind and/or on-site creation, enhancement or restoration is infeasible due to constraints such as parcel size, stream or wetland type; that a wetland of a different type or location is justified based on regional needs or functions and value; or that on-site compensation is not desirable. Where feasible, created, enhanced or restored wetlands shall be of a higher type than the altered wetland. Compensation areas shall be determined according to the altered wetland's function, acreage, type, location, self-sustaining abilities and the amount of time required for the created, enhanced or restored wetland to become a functioning wetland.

(4) Compensation shall not be required for the construction of new storm water system facilities, except for transmission systems not related to the wetland or stream being impacted.

(b) Replacement Guidelines:

(1) Wetlands and stream corridors with riparian habitats shall be replaced in accordance with their classification at a minimum ratio of 1:1 for functional value. This ratio of replacement may be increased based upon

the following criteria:

i. If it has been determined that the probable success of the replacement wetland is uncertain;

ii. The compensation project is proposed off-site; or

iii. If there is a significant period of time between destruction and replication of wetland functions.

(2) Applicants proposing restoration or enhancement as an alternative to replace wetland loss shall identify how the wetland restoration or enhancement conforms to the overall goals and requirements of this chapter. Wetland restoration and enhancement proposals shall meet the following criteria:

i. The restoration or enhancement for one function and value shall not degrade another function or value;

ii. The restoration and enhancement ratios shall also be 1:1 for functional value The functional value of the restored or enhanced wetland shall be equal to or greater than the functional value of the wetland altered plus the functional value of the restored or enhanced wetland prior to restoration or enhancement.

(3) The Director may allow the applicant to contribute a fee in lieu of compensation for loss of type III or IV wetlands, the total areas of which do not exceed one acre, to a fund to mitigate for wetland loss. The Director shall set reasonable fees for monetary compensation of stream or wetland loss. Fees shall be based upon the price of land acquisition plus 125 percent of the amount that would be required to perform off-site, in-kind compensation in accordance with the replacement guidelines set forth in Section .260(b)(1) hereof and monitoring requirements in Section .260(e) hereof. Such fees shall be held in a designated mitigation bank fund for the express use of ongoing wetland acquisition, creation, enhancement or restoration projects and shall not be commingled with other funds. Dedication of land containing wetlands or streams may substitute for monetary compensation, but only to the extent that such dedication would provide the City with increased value because of access, control and protection provided by public ownership or to the extent that such dedicated land could be improved under the provisions of this chapter (see Section .170). Provisions for access must be included with any dedication of land.

(c) Mitigation Plan Requirements: In the event that creation, enhancement or restoration as a form of compensation is chosen for mitigation, the applicant or violator shall provide a wetland or stream mitigation plan for approval. The plan shall provide information on land acquisition, construction, maintenance and monitoring of the created, enhanced or restored wetland or stream that recreates as nearly as possible the original wetland or stream in terms of function, geographic location and setting. All mitigation plans shall be prepared by a wetlands specialist, submitted by the applicant, and contain the following information:

(1) Data collected and synthesized for the newly created, enhanced or restored site;

(2) Specific goals and objectives describing site function, target species and selection criteria;

(3) Performance standards which shall include criteria for assessing goals and objectives;

(4) Contingency plans which clearly define course of action or corrective measures needed if performance standards are not met;

(5) A legal description and a survey prepared by a licensed surveyor of the proposed development site and location of the wetland or stream on the site;

(6) A scaled plot plan indicating the proposed construction location, zoning setback requirements, and sequence of construction phases. The plan also shall include cross-sectional details, topographic survey data (including percent slope and existing and finished grade elevations) and other technical information, as required, in sufficient detail to explain, illustrate and provide for:

i. Soil and substrate conditions, topographic elevations, scope of grading proposal, and erosion and sediment treatment and source controls needed for wetland or stream construction and maintenance;

ii. Planting plans specifying plant species, types, quantities, locations, sizes, and spacing; the planting season or timing; watering schedule; nutrient requirements for planting and, where appropriate, measures to protect plants from destruction;

iii. Water-quality parameters; turbidity class and criteria for water quality as set forth in WAC 173-201, Water Quality Standards for Surface Waters of the State of Washington, during construction and after completion; water source; water depths; water control measures and water level maintenance practices needed to achieve the necessary ambient water conditions; and hydrocycle or hydroperiod characteristics;

iv. Contingency or mid-course corrections plan; and

v. A monitoring plan, for a period of not less than three years, which establishes responsibility for removal of exotic and nuisance vegetation and for permanent establishment of the wetland or stream and all its component parts;

(7) A clearly defined approach to assess progress of mitigation project;

(8) The plan must indicate ownership, size, type, and complete ecological assessment, including flora, fauna, hydrology, functions, etc. of the stream or wetland being created, enhanced
or restored; and

(9) Information on the natural suitability of the proposed site for establishing the replaced wetland or stream (i.e. water source and drainage patterns, topographic position, wildlife habitat opportunities, value of the existing area to be converted, etc.).

(d) The Director shall review and approve the mitigation plan. Agreed-upon performance standards shall be contained in the mitigation plan and approved by the applicant and the Director during the review process.

(e) The applicant must demonstrate fiscal, administrative, and technical competence to successfully execute the overall project through completion. This compensation project shall be monitored for a minimum of three years in accordance with the approved performance and maintenance agreement. In the event of a breach of any condition of said agreement, the Director may institute an action in court and prosecute the same to judgment and execution. Final approval for the completed compensation project involving creation, enhancement or restoration shall be granted by the Director when the applicant submits documentation that all requirements of this section have been completed. (Ord. 4476 §5, 1994; Ord. 4422 §1 (in part), 1993).

21.22.270 **BONDS.**

(a) Performance bonds: Except for public agencies, applicants receiving a permit involving compensation for mitigation are required to post a cash performance bond or other acceptable security to guarantee compliance with this chapter prior to beginning any site work. The surety shall guarantee that work and materials used in construction are free from defects. All bonds shall be approved by the City Attorney. The surety or bonds cannot be terminated or canceled without written approval. The Director shall release the bond after documented proof that all structures and improvements have been shown to meet the requirements of this chapter and that a maintenance bond has been posted, if required.

(b) Maintenance bonds: Except for public agencies, an applicant shall be required to post a cash maintenance bond or other acceptable security guaranteeing that structures and improvements required by this chapter will perform satisfactorily for a minimum of three years after they have been constructed and approved. The value of the bond shall be based on the average or median of three contract bids that establish all costs of compensation, including costs relative to performance, monitoring, maintenance, and provision for contingency plans. The amount of the bond shall be set at 150 percent of the average expected cost of the compensation project. All bonds shall be on a form approved by the City Attorney. Without written release, the bond cannot be canceled or terminated. The Director shall release the bond after determination that the performance standards established for measuring the effectiveness and success of the project have been met. (Ord. 4422 §1 (in part), 1993).

21.22.280 **ENVIRONMENTALLY**

SENSITIVE DESIGNATION.

Pursuant to WAC 197-11-908 and BMC 21.12, fish and wildlife habitat conservation areas, erosion hazard areas, landslide hazard areas, steep slopes, wetlands, and streams are hereby designated as environmentally sensitive areas. These areas are mapped on Bremerton's Generalized Critical Areas Maps available in the Engineering Division, Public Works and Utilities Department. The following SEPA categorical exemptions shall not apply within these areas: BMC 21.12.090 and the following subsections of WAC 197-11-800: (1)(b); (2)(d) excluding landscaping, (e),(f) and (g); (3); 24(a), (b), (c) and (d); and (25)(h). (Ord. 4422 §1 (in part), 1993).

21.22.290 NONCONFORMING USES/STRUCTURES.

An established use or existing structure that was lawfully permitted prior to adoption of this chapter, but which is not in compliance with this chapter, may continue subject to the provisions of the Zoning Code, BMC 21.02.780-.840, Nonconformities. (Ord. 4422 §1 (in part), 1993).

21.22.300 APPEALS.

An appeal of a decision regarding a critical area may be made in accordance with the Zoning Code, BMC 21.02.850-.940, Administration and must be accompanied by a fee as provided in Council Resolution No. 2398, as amended. (Ord. 4422 §1 (in part), 1993).

21.22.310 ENFORCEMENT.

(a) No regulated activity, as defined in Section .030 hereof, shall be conducted without a permit and without full compliance with this chapter. All activities not allowed or conditionally approved shall be prohibited. The Director and authorized agents shall have authority to enter upon privately owned land for the purpose of performing duties deemed necessary for compliance with this chapter. This may include, but is not limited to, all necessary examinations, surveys or gathering of site samples.

(b) The Director shall have authority to enforce this chapter, issue delineation verifications, permits, and violation notices, and process violations through the use of administrative orders and/or civil and criminal actions. Law enforcement officers or other authorized officials with police power shall assist the Engineering Division in carrying out the duties necessary for compliance. All costs, fees, and expenses in connection with enforcement of such actions may be recovered as damages against the violator. Any person who commits, takes part in or assists in any violation of any provision of this chapter shall be guilty of a misdemeanor and upon conviction may be fined in an amount not to exceed $1,000 for each offense, be imprisoned for a term not exceeding 90 days or be both fined and imprisoned. Each violation of this act shall be considered a separate offense, and in case of continuing violation, each day's continuance shall be deemed to be a separate and distinct offense.

(c) In the event of violation, the City shall have the authority to order restoration, enhancement, or creation measures to compensate for the destroyed or degraded critical area. If work is not completed in a reasonable time following the order, the City may implement a process to restore or enhance the affected site or create new wetlands or streams to offset loss as a result of violation in accordance with Section .270 hereof. The violator shall be liable for all costs of such action, including administrative costs. (Ord. 4422 §1 (in part), 1993).

21.22.320 SEVERABILITY.

If any clause, sentence, paragraph, section, or part of this chapter or the application thereof to any person or circumstances shall be adjudged by any court of competent jurisdiction to be invalid, such order or judgment shall be confined in its operation to the controversy in which it was rendered and shall not affect or invalidate the remainder of any part thereof to any other person or circumstances, and to this end, the provisions of each clause, sentence, paragraph, section or part of this chapter are hereby declared to be severable. (Ord. 4422 §1 (in part), 1993).